



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2022-0962; FRL-10505-01-R9]

Finding of Failure to Submit State Implementation Plan Revisions Required Under Clean

Air Act Section 185; California; Sacramento Metro Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action.

SUMMARY: The EPA is taking final action finding that the state of California has failed to submit state implementation plan (SIP) revisions for the Sacramento Metro nonattainment area to satisfy certain requirements of the Clean Air Act (CAA) for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS). Specifically, these requirements pertain to the assessment and collection of fees under CAA section 185. This action triggers certain CAA deadlines for the imposition of sanctions if California does not submit the required SIP revisions within the specified timeframes. This finding also establishes a CAA deadline for the EPA to promulgate federal implementation plans (FIPs) to address the CAA section 185 requirements if the State does not submit or the EPA does not approve the State's section 185 SIP revisions.

DATES: This action is effective on **[Insert date 30 days after date of publication in the *FEDERAL REGISTER*]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2022-0962. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR**

FURTHER INFORMATION CONTACT section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947-4137 or by email at wang.mae@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

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I. Background

A. The Sacramento Metro Ozone Nonattainment Area

The Sacramento Metro ozone nonattainment area in California consists of Sacramento and Yolo counties and portions of El Dorado, Placer, Solano and Sutter counties. For a precise description of the geographic boundaries of the Sacramento Metro area for the 2008 ozone NAAQS, see the Code of Federal Regulations (CFR) at 40 CFR 81.305. Several local air agencies have jurisdiction in this area. Sacramento County is under the jurisdiction of the Sacramento Metropolitan Air Quality Management District (Sacramento Metropolitan AQMD). Yolo County and the eastern portion of Solano County comprise the Yolo-Solano Air Quality Management District (Yolo-Solano AQMD). The southern portion of Sutter County is part of the Feather River Air Quality Management District (Feather River AQMD). The western portion of Placer County is part of the Placer County Air Pollution Control District (Placer County APCD). Lastly, the western portion of El Dorado County is part of the El Dorado County Air Quality Management District (El Dorado County AQMD). In California, the California Air Resources

Board (CARB) is the agency responsible for the adoption and submission of SIPs and SIP revisions to the EPA. Working jointly with CARB, local and regional air pollution control districts in California are responsible for the development of regional air quality plans. These agencies adopt and submit their plans to CARB for state adoption and submission to the EPA as revisions to the California SIP.

On May 21, 2012 (77 FR 30088), the EPA designated the Sacramento Metro area as nonattainment for the 2008 ozone standard and classified the area as Severe-15. This designation was effective on July 20, 2012. The 8-hour ozone designations and classifications for California areas are codified at 40 CFR 81.305.

B. Statutory and Regulatory Requirements

Section 185 of the CAA requires states with Severe and Extreme ozone nonattainment areas to have a plan that implements the program specified in that section. The CAA section 185 fee program provides for collecting fees from each major stationary source of volatile organic compounds (VOC) and oxides of nitrogen (NO_x) for each calendar year following a failure to attain the ozone standard by the applicable attainment date. While CAA section 185 expressly mentions VOC, CAA section 182(f) extends the application of this provision to NO_x by providing that “plan provisions required under [subpart D] for major stationary sources of [VOC] shall also apply to major stationary sources of [NO_x].” CAA section 185(b) specifies the method for computing the fee amount. Section 185(a) specifies that the fee is payable for each calendar year beginning after the attainment date, until the area is redesignated as an attainment area for ozone. Each such plan revision should include procedures for assessment and collection of such fees. No source is required to pay any fee for emissions during a year for which the area receives an extension of their attainment date under CAA section 181(a)(5).

On March 6, 2015 (80 FR 12263), the EPA established a final rule for implementing the 2008 ozone NAAQS. That rule established deadlines for submitting various elements of an ozone nonattainment area SIP. The due date for fee programs is codified at 40 CFR 51.1117. For

each ozone nonattainment area initially classified Severe or Extreme for the 2008 ozone NAAQS, the state must submit a SIP revision within 10 years of the effective date of the area's nonattainment designation that meets the requirements of CAA section 185. The deadline for California to submit CAA section 185 fee programs for the Sacramento Metro area for the 2008 ozone NAAQS was July 20, 2022.

C. Consequences of Findings of Failure to Submit a SIP

Section 179(a) of the CAA specifies the consequences if the EPA finds that a state has failed to make a required SIP submission, if the EPA has determined that a submitted SIP is incomplete, or if the EPA has disapproved a SIP submission. Additionally, CAA section 110(c) specifies that any of these findings also triggers an obligation for the EPA to promulgate a FIP within 2 years of the finding if the state has not submitted and the EPA has not approved the required submission. The first finding, that a state has failed to submit a plan or one or more elements of a plan required under the CAA, is the finding relevant to this action.

The EPA is finding that the state of California has failed to make required CAA section 185 fee program SIP submissions for portions of the Sacramento Metro nonattainment area for the 2008 8-hour ozone NAAQS. Pursuant to CAA section 179(a) and (b) and 40 CFR 52.31, the EPA must affirmatively determine that California has submitted the required plan revisions for the Sacramento Metro area within 18 months of the effective date of this rulemaking, or the offset sanction identified in CAA section 179(b)(2) and 40 CFR 52.31 will apply in each portion of the area that remains subject to the finding. Additionally, if the EPA has not affirmatively determined that the State has made a complete submission for the area within 6 months after the offset sanction is imposed, then the highway funding sanction will apply to each portion of the area that remains subject to the finding, in accordance with CAA section 179(b)(1) and 40 CFR 52.31. Lastly, CAA section 110(c) requires that no later than 2 years after the effective date of this finding, the EPA must promulgate a FIP if the State has not submitted and the EPA has not approved the required SIP revisions as fully meeting the CAA section 185 fee obligation for the

2008 ozone NAAQS. The 18- and 24-month clocks for any area will stop and the sanctions will not take effect if the EPA finds that the State has made a complete submittal within the required timeframe.

II. EPA Action

In this action, the EPA is making a finding that the state of California has failed to submit CAA section 185 fee programs for the 2008 ozone NAAQS for the portions of the Sacramento Metro ozone nonattainment area that are under the jurisdiction of the following air agencies: El Dorado County AQMD, Placer County APCD, Sacramento Metropolitan AQMD, and Yolo-Solano AQMD. California submitted a CAA section 185 fee program SIP revision for the Feather River AQMD portion of the Sacramento Metro area on July 5, 2022, and it was determined complete on October 28, 2022. Therefore, the portion of the Sacramento Metro ozone nonattainment area that is under the jurisdiction of the Feather River AQMD is not subject to this action. This finding starts the 18-month emission offset sanctions clock, the 24-month highway funding sanctions clock, and a 24-month clock for promulgation by the EPA of a FIP.

III. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at <https://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Notice and Comment Under the Administrative Procedure Act (APA)

Section 553 of the APA, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making this final agency action without prior proposal and opportunity for comment because no significant EPA judgment is involved in making findings of failure to submit SIPs, or elements of SIPs, required by the CAA, where states and territories have made no submissions, or incomplete submissions, to meet the requirement. Thus, notice and public procedures are unnecessary. The EPA finds that this

constitutes good cause under 5 U.S.C. 553(b)(3)(B).

B. Executive Order 12866: Regulatory Planning and Review, and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and therefore was not submitted to the Office of Management and Budget (OMB) for review.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the PRA because it does not impose additional requirements or create any new information collection burdens.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA (2 U.S.C. 1531-1538) and does not significantly or uniquely affect small governments. This action does not impose any new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175, because this action does not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose

substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not create any new regulations. This action finds that a state has failed to submit required SIP revisions.

I. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. This action does not involve technical standards.

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (February 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health effects of their programs, policies, and activities on minority populations and low-income populations in the United States. The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-

income populations because it does not directly affect the level of protection provided to human health or the environment. This action finds that a state has not met the requirement to submit CAA section 185 fee program SIP revisions and begins clocks that could result in the imposition of sanctions if the state continues to not meet this statutory obligation. If the state fails to submit the required SIP revisions or submits SIP revisions that the EPA cannot approve, then the EPA will be required to develop the plans in lieu of the state.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

M. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after the date of publication in the *FEDERAL REGISTER*]**. Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Dated: December 23, 2022.

Martha Guzman Aceves,
Regional Administrator,
Region IX.

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